

THE WHITE HOUSE
WASHINGTON

June 7, 2000

HAND-DELIVERED

James C. Wilson, Esq.
Chief Counsel
Committee on Government Reform
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Jim:

This letter follows-up on our recent correspondence, as well as on Beth Nolan's testimony and written statements to the Committee, regarding the electronic records management of e-mail of the Office of the Vice President (OVP). It also generally updates you on electronic records management issues involving that office. Following your recent inquiry whether documents on this subject were produced in response to the Committee's March 9, 2000 subpoena, we sent a directive to all Executive Office of the President (EOP) staff requiring the production of "documents relating to the computerized records-management of Office of the Vice President (OVP) e-mail," including but not limited to "documents relating to the management of OVP e-mail by the Automated Records Management System (ARMS)," for the period January 20, 1993 through March 9, 2000 (the date of the Committee's subpoena).¹ Enclosed is a first installment of those documents bearing control numbers E 4503-E 5801.² We will produce additional responsive materials as they are gathered and reviewed. Please note that our directive did not reach materials solely concerning the hard-copy (i.e., non-electronic) records management of documents, nor documents relating only generally to the ARMS system. You should also be aware that, because of demands placed on us by this Committee and other investigative bodies, we have not yet been able to undertake a full ARMS search in response to this directive, but I am told that the search has been placed in the queue.

¹ As noted in my May 18, 2000 letter to you, because the OVP issue is distinct from the Mail2 and Letter D errors, our original search directive to EOP staff, which tracked the language of your subpoena, did not require the production of this broad category of OVP-related documents.

² A few additional documents relating to the Mail2 and Letter D errors also are enclosed. Those documents bear control numbers E 4469-E 4502.

You will recall that issues relating to the non-records management of OVP e-mail were immediately and voluntarily disclosed to the Committee in Beth Nolan's March 17, 2000 letter to Chairman Burton, and that that information was supplemented in her March 23 and March 30 written statements, as well as her March 30 appearance before the Committee. Since then, we have been gathering facts concerning these issues, and I would like to update you on what we have learned. Before doing so, I think it important to reiterate a couple of points. First, while we are doing our best to get a handle on these matters, we are lawyers with laypersons' understandings of what are sometimes complex technical issues. Second, although the new information we learn assists us to better understand the issues, it can also alter previous assumptions, determinations and conclusions. We fully expect that as we progress, we are likely to uncover information that supplements or amends the information provided below. We will continue to do our best to notify the Committee of significant changes.

1. Current Status of Records Management of OVP E-Mail

a. OVP e-mail accounts on the EOP computer system

Although, as we explain below, the OVP had its own tape backup system, current OVP staff until recently believed that OVP e-mail also was being managed by ARMS.³ Their belief was supported by the similar belief of the White House Counsel's Office and the fact that ARMS searches directed by the White House Counsel's Office had produced OVP e-mail. Some OVP e-mail was in ARMS because: (1) during most periods, an e-mail from a White House staff member to an OVP staff member would have been captured by ARMS; (2) beginning in early 1997, new OVP staff members were given e-mail accounts by the Information Systems & Technology Division of the Office of Administration (IS&T) that automatically copied all e-mail sent (but not received) by that staff member to ARMS; and (3) when e-mail from the 1993-94 period was reconstructed following the Armstrong decision, some OVP e-mail from that period was reconstructed and placed into ARMS.⁴ Finally, OVP staff were responsible for searching

³ The only exception was for so-called "bulk e-mail" received from the general public on the whitehouse.gov website, for which technological impediments to ARMS-management seemed to exist. This issue is discussed more fully in section 1.c. of this letter.

⁴ As best we can determine, purely internal OVP e-mail would not have been part of the reconstruction because the OVP had set up its own computer network separate from the White House system. The OVP system used backup tapes to capture documents, including e-mail, on the separate OVP server. It appears that the backup tapes were maintained both as an electronic record of those documents for purposes of the Presidential Records Act, and in case of a catastrophic system failure. Because the OVP creates presidential -- and not federal -- records, the Armstrong ruling regarding archiving of federal records did not apply to it. Indeed, the Armstrong court explicitly stated that it was not addressing, and did not have the authority to address, the management and disposition of presidential records. Armstrong v. Bush, 924 F.2d 282, 290 (D.C. Cir. 1991). Thus, OVP was not required to maintain a searchable database of its e-mail and was not required to be a part of ARMS.

their own computers and hard copy files when requests for information were received, and Congressional committees had received and highlighted a number of OVP e-mails apparently found in that manner.

As Ms. Nolan made clear in her testimony before the Committee, when we learned that our prior understanding was incorrect, we instructed IS&T to address the problem as quickly as possible. Except for OVP staff whose computer accounts are on the Senate e-mail system (a topic discussed immediately below), we are advised that all OVP e-mail accounts are now fully managed by ARMS. Full ARMS-management of e-mail sent by OVP staff on the White House system was accomplished by March 27, 2000. Because complex technical issues were involved in ARMS-scanning incoming e-mail, all OVP e-mail accounts on the White House system had to be moved to an entirely new server to make ARMS-scanning possible. This was finally accomplished on May 8, 2000. We also believe that, when the ARMS-scan was implemented, a copy of all old e-mail still on the OVP server was sent to ARMS. We have asked our outside contractor for independent verification of that fact.

b. OVP e-mail accounts on the Senate computer system

Because the Vice President serves under the Constitution as both the President of the Senate and the Vice President in the Executive Branch, historically he has had staff on the Senate payroll as well as the OVP payroll. Some of the Senate staffers have accounts on the Senate e-mail system which, as you no doubt are aware, does not have a system similar to ARMS or, in fact, archive e-mail at all. IS&T currently is working on developing the technical ability to ARMS-manage OVP staff accounts that are on the Senate system. In the meantime, such staffers have been instructed to retain copies of their e-mail in either hard copy or electronic form.

c. ARMS-management of "bulk e-mail" received from the general public on the whitehouse.gov website

For some time, members of the general public have been able to send e-mail messages to the Vice President via the whitehouse.gov website. When a message is received at that web address, an automatic reply is generated informing the sender that his or her e-mail has been received. The e-mail coming into this site -- which is voluminous -- is then forwarded in bulk to the Vice President's Correspondence Office in the Dirksen Senate Office Building, where it is reviewed for appropriate written responses accomplished through standardized letters that are retained along with the incoming e-mail. The EOP and the National Archives have been engaged in discussions over whether, and to what extent, this bulk e-mail must be retained. Indeed, with respect to bulk mail received from the general public in hard copy form, the EOP many years ago entered into an agreement with the National Archives that allows for the disposal of all but a representative sample of such documents. In any event, until this issue is resolved

with the National Archives, IS&T has devised a technological solution that allows retention of all this bulk e-mail.

2. OVP Backup Tapes

As noted earlier, it appears that the OVP created a tape backup system for documents on its server (including e-mail) as an electronic record of the documents for purposes of the Presidential Records Act, and to guard against the possibility of a catastrophic system failure. These are the backup tapes that will be reconstructed by our outside contractors. We will not know the exact dates covered by the tapes until they are reviewed and reconstructed, but some periods may not be covered.

In particular, your May 16, 2000 letter regarding non-records managed e-mail has led us to discover that a technical configuration error apparently prevented e-mail on the OVP server from being backed-up from the end of March 1998 through early April 1999. Our present understanding is that in March 1998 an outside contractor was responsible for migrating the OVP server to a new operating system known as Windows NT 4.0. In that process, the contractor apparently added what technical personnel call a new "partition" -- in this case what we are told is an "E:" drive -- to the OVP server so that OVP would have IS&T's standard server configuration. The E: drive contained all of the OVP's e-mail files. Unfortunately, we are advised that technical personnel neglected to add the new E: drive to the server backup schedule, and while backups of the OVP server continued as before, they no longer captured e-mail that had been transferred to the new E: drive. This oversight was not discovered by IS&T until after April 2, 1999, as explained in the enclosed memorandum for Virginia Apuzzo from Dorothy Cleal dated May 13, 1999 (control numbers E 5201-03). We are told that IS&T subsequently corrected the OVP server backup schedule so that the E: drive was properly backed up.

To date, we have not located any Office of Administration memoranda to the Vice President regarding the non-records management of e-mail, which your May 16 letter suggested may exist. We have found the memorandum from Ms. Cleal noted above, and a related e-mail from Ms. Cleal to Mark Lindsay (control number E 5200).

3. Accommodation of the Committee's Interest in Receiving Relevant Documents

As you will see, we have produced to the Committee some documents that reflect either communications to the Vice President or other deliberative or attorney-client communications among the staff of the White House and/or the Vice President's Office. We have taken this step in the interest of working cooperatively with the Committee and accommodating its request for information relating to the OVP issue. As you know, it is the policy of the White House "to

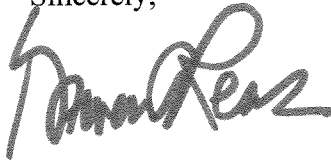
James C. Wilson, Esq.

June 7, 2000

Page 5

comply with Congressional requests for information to the fullest extent consistent with the constitutional and statutory obligations of the Executive Branch.” Memorandum from President Reagan for the Heads of Executive Departments and Agencies Regarding Procedures Governing Responses to Congressional Requests for Information at 1 (Nov. 4, 1982). See also United States v. American Tel. & Tel. Co., 567 F.2d 121, 127 (D.C. Cir. 1977) (“each branch should take cognizance of an implicit constitutional mandate to seek optimal accommodation through a realistic evaluation of the needs of the conflicting branches in the particular fact situation. This aspect of our constitutional scheme avoids the mischief of polarization of disputes”). Our willingness in this instance to provide these documents in the spirit of accommodation should not be construed as a waiver of any applicable privilege now or in the future.

Sincerely,

A handwritten signature in dark ink, appearing to read "Steven Reich", with a stylized, cursive script.

Steven F. Reich
Senior Associate Counsel to the President

Enclosures

cc: Campaign Financing Task Force (w/ encs.)
Office of Independent Counsel Robert Ray (w/ encs.)
Office of Independent Counsel Carol Bruce (w/o encs.)
Office of Independent Counsel Ralph Lancaster (w/o encs.)
House Government Reform Committee, Minority Staff (w/ encs.)